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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/424,544

Applicant(s)

INO ET AL.

Examiner

Jeff Piziali

Art Unit

2629

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 13 December 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.


J.P.

17 July 2006

Continuation of 10. Other (including any explanation in support of the above items):

The appellants are cordially thanked for the 'Supplemental Appellant's Brief' filed 13 December 2005. However, several items of non-compliance have been discovered in the brief requiring correction.

37 C.F.R. § 41.37(c)(1)(iii) requires, "A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed" (see also MPEP § 1205.02).

The 'Supplemental Appellant's Brief' filed 13 December 2005 fails to include a statement of the established "objected to" status of claims 13 and 14 (see Page 2 of the 'Supplemental Appellant's Brief' filed 13 December 2005, as well as Page 3 of the Office Action mailed 4 November 2003).

The 'Supplemental Appellant's Brief' filed 13 December 2005 also fails to include an identification of any claims that are being appealed (see Pages 2-3 of the 'Supplemental Appellant's Brief' filed 13 December 2005).

The appellants are respectfully reminded that the immediate previous 'Notification of Non-Compliant Appeal Brief (37 CFR 41.37)' mailed 21 November 2005 listed an improper 'Status of Claims' section as one reason for noncompliance. Moreover, MPEP § 1205.03 states, "The appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified."

Additionally, 37 C.F.R. § 41.37(c)(1)(ix) requires, "An appendix containing copies of any evidence submitted pursuant to § 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief" (see also MPEP § 1205.02).

The 'Supplemental Appellant's Brief' filed 13 December 2005 fails to include a statement setting forth where in the record that alleged evidence (such as U.S. Patent No. 6,788,380 to Melnik et al.; Verdegaaal Bros., Inc. v. Union Oil Co.; and Trintec Indus., Inc. v. Top-U.S.A. Corp.) was entered in the record by the examiner (see Page 26 of the 'Supplemental Appellant's Brief' filed 13 December 2005).

Moreover, the 'Supplemental Appellant's Brief' filed 13 December 2005 fails to include a copy of the alleged evidence of U.S. Patent No. 6,788,380 to Melnik et al. (see Page 26 of the 'Supplemental Appellant's Brief' filed 13 December 2005).

By at least such reasoning, this 'Notification of Non-Compliant Appeal Brief (37 CFR 41.37)' is deemed necessary and proper at this time.

Although the examiner has attempted to be as thorough as possible, the lengthy appeal brief has not been checked to the extent necessary to determine the presence of all possible errors. Appellants' cooperation is requested in correcting any errors of which appellants may become aware in the brief.

The appellants are hereby notified that the examiner's art unit has recently changed from Art Unit 2673 to Art Unit 2629, please direct all future correspondence accordingly. Thank you.



J.P.
17 July 2006